

House File 410 - Introduced

HOUSE FILE 410

BY SWAIM

A BILL FOR

1 An Act relating to automobile or motor vehicle insurance
2 coverage of liability arising from uninsured, underinsured,
3 or hit-and-run motorists.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 516A.1, Code 2011, is amended to read as
2 follows:

3 **516A.1 Coverage included in every liability policy —**
4 **rejection by insured.**

5 1. ~~No~~ An automobile liability or motor vehicle liability
6 insurance policy insuring against liability for bodily injury
7 or death arising out of the ownership, maintenance, or use of
8 a motor vehicle shall not be delivered or issued for delivery
9 in this state with respect to any motor vehicle registered or
10 principally garaged in this state, unless coverage is provided
11 in such policy or supplemental thereto, for the protection of
12 persons insured under such policy who are legally entitled to
13 recover damages from the owner or operator of an uninsured
14 motor vehicle or a hit-and-run motor vehicle or an underinsured
15 motor vehicle because of bodily injury, sickness, or disease,
16 including death resulting therefrom, caused by accident and
17 arising out of the ownership, maintenance, or use of such
18 uninsured or underinsured motor vehicle, or arising out of
19 physical contact ~~of~~ with, or reasonable avoidance of physical
20 contact with, such hit-and-run motor vehicle with the person
21 insured or with a motor vehicle which the person insured is
22 occupying at the time of the accident. Both the uninsured
23 motor vehicle or hit-and-run motor vehicle coverage, and the
24 underinsured motor vehicle coverage shall include limits for
25 bodily injury or death at least equal to ~~those stated in~~
26 ~~section 321A.1, subsection 11~~ the limits of liability for the
27 bodily injury portion of the insurance policy. The form and
28 provisions of such coverage shall be examined and approved by
29 the commissioner of insurance.

30 2. ~~However, the~~ The named insured may reject all of ~~such~~
31 the coverage required in subsection 1, or reject the uninsured
32 motor vehicle (hit-and-run motor vehicle) coverage, or reject
33 the underinsured motor vehicle coverage, by written rejections
34 signed by the named insured. If rejection is made on a form
35 or document furnished by an insurance company or insurance

1 producer, ~~it~~ the rejection shall be on a separate sheet
2 of paper which contains only the rejection and information
3 directly related to ~~it~~ the rejection, including an explanation
4 of the coverage being rejected and the amount of the premium
5 associated with the coverage being rejected. Such coverage
6 need not be provided in or supplemental to a renewal policy if
7 the named insured has rejected the coverage in connection with
8 a policy previously issued to the named insured by the same
9 insurer.

10 Sec. 2. Section 516A.2, Code 2011, is amended to read as
11 follows:

12 **516A.2 Construction — minimum coverage — stacking step-down**
13 **provisions.**

14 1. ~~Except with respect to a policy containing both~~
15 ~~underinsured motor vehicle coverage and uninsured or~~
16 ~~hit-and-run motor vehicle coverage, nothing~~ Nothing contained
17 in this chapter shall be construed as requiring forms of
18 coverage provided pursuant hereto, whether alone or in
19 combination with similar coverage afforded under other
20 automobile liability or motor vehicle liability policies, to
21 afford limits in excess of those that would be afforded had the
22 insured thereunder been involved in an accident with a motorist
23 who was insured under a policy of liability insurance with
24 the minimum limits for bodily injury or death prescribed in
25 subsection 11 of section 321A.1. Such forms of coverage may
26 include terms, exclusions, limitations, conditions, and offsets
27 which are designed to avoid ~~duplication of insurance or other~~
28 ~~benefits~~ duplicate payment of damages.

29 ~~To the extent that *Hernandez v. Farmers Insurance Company,*~~
30 ~~460 N.W.2d 842 (Iowa 1990), provided for interpolicy stacking~~
31 ~~of uninsured or underinsured coverages in contravention of~~
32 ~~specific contract or policy language, the general assembly~~
33 ~~declares such decision abrogated and declares that the~~
34 ~~enforcement of the antistacking provisions contained in a motor~~
35 ~~vehicle insurance policy does not frustrate the protection~~

1 ~~given to an insured under section 516A.1.~~

2 ~~2. Pursuant to chapter 17A, the commissioner of insurance~~
3 ~~shall, by January 1, 1992, adopt rules to assure the~~
4 ~~availability, within the state, of motor vehicle insurance~~
5 ~~policies, riders, endorsements, or other similar forms of~~
6 ~~coverage, the terms of which shall provide for the stacking of~~
7 ~~uninsured and underinsured coverages with any similar coverage~~
8 ~~which may be available to an insured.~~

9 ~~3. It is the intent of the general assembly that when more~~
10 ~~than one motor vehicle insurance policy is purchased by or on~~
11 ~~behalf of an injured insured and which provides uninsured,~~
12 ~~underinsured, or hit-and-run motor vehicle coverage to an~~
13 ~~insured injured in an accident, the injured insured is entitled~~
14 ~~to recover up to an amount equal to the highest single limit~~
15 ~~for uninsured, underinsured, or hit-and-run motor vehicle~~
16 ~~coverage under any one of the above described motor vehicle~~
17 ~~insurance policies insuring the injured person which amount~~
18 ~~shall be paid by the insurers according to any priority of~~
19 ~~coverage provisions contained in the policies insuring the~~
20 ~~injured person.~~

21 2. A policy to which this chapter applies shall not include
22 exclusions or step-down provisions that eliminate or reduce
23 uninsured or underinsured coverage for a person who would
24 otherwise be covered under the policy, for the reason that
25 the person is injured by, or while occupying a vehicle being
26 operated by, another person insured under the policy.

27 Sec. 3. Section 516A.4, Code 2011, is amended to read as
28 follows:

29 **516A.4 Insurer making payment — reimbursement — settlement**
30 **— substitute tender — good faith.**

31 1. In the event of payment to any person under the
32 coverage required by this chapter and subject to the terms and
33 conditions of such coverage, the insurer making such payment
34 shall, to the extent thereof, be entitled to the proceeds of
35 any settlement or judgment resulting from the exercise of

1 any rights of recovery of such person against any person or
2 organization legally responsible for the bodily injury for
3 which such payment is made, including the proceeds recoverable
4 from the assets of the insolvent insurer, to the extent that
5 the proceeds of the resulting settlement or judgment, when
6 combined with such payment made by the insurer, exceed such
7 person's damages. The person to whom said payment is made
8 under the insolvency protection required by this chapter shall
9 to the extent thereof, be deemed to have waived any right to
10 proceed to enforce such a judgment against the assets of the
11 judgment debtor who was insured by the insolvent insurer whose
12 insolvency resulted in said payment being made, other than
13 assets recovered or recoverable by such judgment debtor from
14 such insolvent insurer.

15 2. An insurer providing coverage under this chapter shall,
16 within thirty days after receipt of a written request for
17 permission to settle with any person or organization legally
18 responsible for bodily injury for which coverage is provided
19 under this chapter, either give consent to the settlement or
20 tender substitute payment of the settlement amount. Failure
21 of the insurer to give such consent or to tender substitute
22 payment shall constitute the insurer's consent to the
23 settlement and shall bar the insurer from claiming that the
24 settlement prejudiced the insurer's rights under the policy or
25 this section.

26 3. An insurer that pursues, through subrogation or
27 assignment, a claim against any person or organization legally
28 responsible for bodily injury for which the insurer has made
29 payments under this chapter, shall include in such claim all
30 damages of the subrogor or assignor of the claim, and shall
31 tender to the subrogor or assignor any amounts to which the
32 subrogor or assignor would have been entitled under subsection
33 1 if the subrogor or assignor had directly pursued the claim.

34 4. An insurer shall act in good faith in response to a
35 claim for benefits under coverage required by this chapter.

1 An insurer who fails to act in good faith in response to such
2 a claim for benefits shall be liable to the person owed such
3 benefits for all damages caused by such failure, including
4 interest, reasonable attorney fees and expenses, and punitive
5 damages if the required showing is made pursuant to chapter
6 668A. For the purposes of this subsection, "good faith" means
7 an informed judgment based on honesty and diligence, supported
8 by evidence that the insurer knew or should have known at the
9 time the insurer made a decision on the claim. The insurer
10 shall have the burden of proving that it acted in good faith.

11 EXPLANATION

12 This bill relates to automobile or motor vehicle insurance
13 coverage of liability arising from uninsured, underinsured, or
14 hit-and-run motorists.

15 Code section 516A.1 is amended to require coverage for
16 damages arising out of reasonable avoidance of physical contact
17 with a hit-and-run motor vehicle. Coverage for uninsured,
18 underinsured, and hit-and-run motor vehicle liability must
19 equal the limits of liability for the bodily injury portion
20 of the insurance policy instead of the statutory amounts
21 required for proof of financial responsibility in Code section
22 321A.1(11). A form furnished by the insurance company allowing
23 an insured to reject any or all of the required coverage must
24 include an explanation of the coverage being rejected and the
25 amount of premium associated with the coverage being rejected.

26 Code section 516A.2(1) is amended to provide that such
27 coverage may include provisions that are designed to avoid
28 duplicate payment of damages. The remainder of Code sections
29 516A.2(1) and 516A.2(2) relating to stacking of uninsured and
30 underinsured coverages, and Code section 516A.2(3) relating to
31 coverage under multiple motor vehicle insurance policies of
32 one insured, are stricken. Code section 516A.2 is amended to
33 prohibit exclusions or step-down provisions in motor vehicle
34 insurance policies that eliminate or reduce uninsured or
35 underinsured coverage for a person who would otherwise be

1 covered under the policy, because the person is injured by, or
2 while in a vehicle being operated by, another person insured
3 under the policy.

4 Code section 516A.4(1) is amended to provide that an insurer
5 who has made payments under a policy to an injured party is
6 entitled to proceeds of a resulting settlement or judgment
7 against the person responsible for those damages only to the
8 extent that the proceeds combined with payment made by the
9 insurer exceed the injured party's damages.

10 Code section 516A.4(2) provides that an insurer has 30 days
11 after receipt of a request for permission to settle against
12 the responsible party, to either consent to the settlement
13 or to tender substitute payment of the settlement amount, or
14 such failure will constitute consent and bar the insurer from
15 claiming prejudice as a result of the settlement.

16 Code section 516A.4(3) provides that when an insurer pursues
17 a claim, through subrogation or assignment, against the party
18 responsible for bodily injury for which the insurer has made
19 payments, the insurer shall include the damages of the subrogor
20 or assignor and tender the amount to the assignor or subrogor
21 that the person would have been entitled to if that person had
22 pursued the claim directly.

23 Code section 516A.4(4) requires an insurer to act in good
24 faith in response to a claim for uninsured, underinsured, or
25 hit-and-run benefits under Code chapter 516A and provides
26 that an insurer that does not act in good faith is liable
27 to the person owed such benefits for all damages caused by
28 that failure, including interest, reasonable attorney fees
29 and expenses, and punitive damages upon the showing required
30 under Code chapter 668A. For the purposes of this provision,
31 "good faith" means an informed judgment based on honesty and
32 diligence, supported by evidence that the insurer knew or
33 should have known at the time the insurer made a decision on
34 the claim. The insurer has the burden of proving that it acted
35 in good faith.